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PATENT
Attorney Docket No. **045636-5033-US**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **Nguyen, Q. T. *et al.***

Application No.: **09/555,640** Group Art Unit: **1648**

Filed: **August 10, 2000** Examiner: **Parkin, J.**

For: **Erythrovirus and Its Applications**

Assistant Commissioner for Patents
Washington, D.C. 20231

RESPONSE TO OFFICE COMMUNICATION

In response to the Office communication dated November 4, 2002 (Paper No. 10), Applicants respectfully elect, with traverse, to prosecute **SEQ ID NO: 1** of Group I, claims 1-6 and 10, drawn to isolated nucleic acids, fragments thereof and primer pairs. The due date for reply is December 4, 2002.

The Office asserts the inventions listed as Groups I-VIII do not relate to a single inventive concept under PCT Rule 13.1 because under PCT Rule 13.1, the groups lack the same or corresponding special technical features. The Office also asserts that a special technical feature is lacking within each of the identified groups and requires an election of a single product or single nucleotide sequence for examination.

Applicants respectfully traverse the restriction requirement. It is believed that all sequences as set forth in claim 1 are properly examined as a whole for the following reasons. SEQ ID NO: 1 is directed to a mostly full length (about 95%) genomic clone of erythrovirus V9. Other nucleotide sequences are fragments of SEQ ID NO: 1 and are directed to various V9 antigens, such as for example, the 7.5 kDa protein, and the VP1u protein, or the fragments are primers for

the amplification of sequences derived from an Erythrovirus type V9. While each of the identified nucleic acid sequences has a different structure, the identified nucleic acid sequences are all believed to be part of the sequence of SEQ ID NO: 1 which is the mostly full length genomic clone of Erythrovirus V9. Thus, a search of the Erythrovirus V9 sequence (SEQ ID NO: 1) would encompass the other nucleotide sequences represented by the additional SEQ ID Nos. In view of the fact that a search of SEQ ID NO: 1 would also overlap with a search of the other nucleotide sequences, all the nucleotide sequences have the same special technical feature. Since a search of SEQ ID NO: 1 would also cover a search of the other nucleotide sequences, no undue burden on the Examiner is apparent.

The Office also asserts that the claimed invention fails to make a contribution over the prior art in view of the document D1 (Journal of Virology 58(3): 921-936 (1986)) cited in the ISA Chapter I Search Report. However, such a judgment is premature without an examination of the claims on the merits.

In addition, Group II (claims 7-9, directed to a variant erythrovirus or plasmid encoding the variant), Group III (claims 11-14, 16 and 24-27, directed to diagnostic methods employing various nucleotide sequences) and Group VIII (claims 36 and 37) are linked to Group I by the special technical feature of Group I. Therefore, since Groups II, III and VIII share the common technical feature of the nucleotide sequence of Group I, the additional groups should be examined along with the entirety of Group I.

It is respectfully requested that the sequences set forth in Group I be examined as a whole and that the claims of at least Groups II, III and VIII be joined to Group I, and examined with, the claims of Group I. Reconsideration and withdrawal of the requirement for election of a single product of Group I is respectfully requested.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of times fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

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Washington, D.C. 20231

RESPONSE TRANSMITTAL FORM

1. Transmitted herewith is a Response to the Office Communication dated November 4, 2002 (Paper No. 10).

2. Extension of Time: The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136(a) apply. Applicants do not believe an extension of time is required. However, if Applicants have inadvertently overlooked the need for an extension of time, please consider this a Petition therefor.

3. Fee Calculation (37 C.F.R. § 1.16):

CLAIMS AS AMENDED						
	Remaining		**Previously Paid**	**Extra**	**Rate**	**Total Fees**
Total Claims	**9**	minus	**20**	**0**	$18 each=	0.00
Independent Claims	**1**	minus	**3**	**0**	$84 each=	0.00
First presentation of Multiple Dependent Claim					$280.00	0.00
					Sub-total =	0.00
					Reduction by ½ for filing by a small entity	0.00
					Total Fee =	0.00

4. Constructive Petition: **Except** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. § 1.16 and § 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 0-0310.

This paragraph is intended to be a **constructive petition for extension of time** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,
Morgan, Lewis & Bockius LLP

Dated: **December 4, 2002**
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